Supreme Court, U. S.
FILED
JUN 5 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-719

JEROME D. CHAPMAN, COMMISSIONER OF THE TEXAS DEPARTMENT OF HUMAN RESOURCES, et al., *Petitioners,*

v.

HOUSTON WELFARE RIGHTS ORGANIZATION, et al., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF AMICUS CURIAE OF EAST TEXAS LEGAL SERVICES, INC.

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BRIEF AMICUS CURIAE OF EAST TEXAS LEGAL SERVICES, INC.

QUESTIONS PRESENTED FOR REVIEW

I.

Does 28 U.S.C. § 1343 (4) give federal courts jurisdiction over an action asserting that Texas' Aid to Families With Dependent Children Program failed to comply

with federal requirements, under statute providing federal jurisdiction to recover damages or to secure equitable or other relief under civil rights laws?

II.

(A) Does the decision of the Court of Appeals for the Fifth Circuit holding that Texas must recalculate its standard of need in the Aid to Families With Dependent Children Program conflict with this Court's prior ruling specifically upholding same in *Jefferson* v. *Hackney*, 406 U.S. 535 (1972)?

(B) Did the Court of Appeals misinterpret this Court's ruling in *Van Lare* v. *Hurley*, 421 U.S. 338 (1975), to apply to a state's calculation of its standard of need in addition to determinations concerning available income?

Did the decision of the Court of Appeals for the Fifth Circuit intrude into the calculation of a standard of need in a state's Aid to Families With Dependent Children Program, an area explicitly reserved to the states by this Court in *Dandridge* v. *Williams*, 397 U.S. 471 (1970) and *Jefferson* v. *Hackney*, *supra*?

INTEREST OF THE AMICUS

Established in 1977, East Texas Legal Services, Inc., is a federally funded non-profit corporation existing for the express purpose of providing quality legal services to low income persons within its geographic jurisdiction.

East Texas Legal Services, Inc., serves ten counties in Deep East Texas, they are: Orange, Jefferson, Nacogdoches, Angelina, Cherokee, San Augustine, Smith, Harrison, Gregg and Rusk. Additionally, the organization will,

in 1978, expand its services to include the following five counties in Texas: Bowie, Cass, Red River, Morris and Titus. Statistics reflect that within the present ten county area of East Texas Legal Services, Inc., there are in excess of 160,000 people living in poverty as defined by the federal government, with approximately 18,000 persons receiving Aid for Families with Dependent Children as administered by the State.

East Texas Legal Services, Inc., maintains a vital interest in protecting the nature and quality of the rights of those who are in its prospective client community.

It submits this brief because it strongly believes that both the substantive and jurisdictional issues presently before the Court will significantly impact the ability of members of our client community to bring within their reach "the same opportunities that are available to others to participate meaningfully in the life of the community". *Goldberg v. Kelly*, 397 U.S. 254, 265 (1970). East Texas Legal Services, Inc., believes that the Texas policies challenged in this litigation contravenes this concept of meaningful participation. It is for this reason that the Brief *Amicus Curiae* of East Texas Legal Services, Inc., is respectfully submitted to this Court.

STATEMENT OF THE CASE

This action was brought by the respondents, wherein they challenged the manner in which the Texas Department of Human Resources disburses funds under the program known as Aid to Families with Dependent Children (AFDC). Particularly, respondents contended that the disbursement of federal funds violated federal law by (1) utilizing a flat grant system rather than as-

certaining the amount of the individual's needs, in violation of 42 U.S.C. § 602 (a) (23); and (2) by pursuing a policy of prorating shelter and utility needs if non-recipients of AFDC share the residence of the recipient, in violation of 42 U.S.C. § 602 (a) (7), 606 (b) and 602 (a) (23) (App. pp. 2-14). The jurisdiction of the district court was based on 28 U.S.C. §§ 1343 (3) and (4) with respondents raising their claims under 42 U.S.C. § 1983. (App. p. 3). The complaint sought both declaratory and injunctive relief, with respondents seeking an injunction enjoining the "reduction of shelter and utility needs by the policy of proration by the Texas Department of Human Resources". (App. p. 12). On February 11, 1975, the district court entered its memorandum and opinion, finding, *inter alia*, that the Court had jurisdiction of respondents' claims under 28 U.S.C. § 1343 (4) but not under § 1343 (3); and that the challenged statutory policies were not in conflict with the cited federal laws. Accordingly, the district court granted petitioners' motion for summary judgment. 391 F. Supp. 223 (S.D. Tex. 1975).

On appeal the United States Court of Appeals for the Fifth Circuit, affirmed the finding of the district court that jurisdiction existed under 28 U.S.C. § 1343 (4) but reversed the district court's holding that petitioners' policy of proration was not in conflict with the applicable federal laws and regulations. 555 F.2d 1219 (5th Cir. 1977). On February 21, 1978, this Court granted certiorari to consider whether the lower federal courts had properly exercised their jurisdiction over respondents' claim; whether the decision of the United States Court of Appeals that the State's policy of proration of utility and shelter needs conflicts with prior decisions of this Court; See, e.g.

Jefferson v. Hackney, 406 U.S. 435 (1972), *Dandridge v. Williams*, 397 U.S. 471 (1970); and whether the Court of Appeals had misinterpreted this Court's decision in *Van Lare v. Hurley*, 421 U.S. 338 (1975) in finding the Texas system to be constitutionally deficient.

It is the position of the *Amicus* that, under the controlling case law, the decision of the Court of Appeals should be upheld. However, we expressly note that to the extent that the Court of Appeals did not find jurisdiction under § 1343 (3), 555 F.2d 1220-1221 n. 1., it is the position of Amicus that the constitutional principles, previously enunciated by this Court, mandate a different result on the jurisdictional grounds for this action.

ARGUMENT

I.

THE COURTS BELOW DID NOT ERR IN FINDING JURISDICTION UNDER 28 U.S.C. § 1343.

At the outset Amicus wishes to apprise this Court that it fully concurs in the reasoning and arguments set forth in respondents' brief, with regard to the jurisdiction of the district court under 28 U.S.C. § 1343 (4) and the finding of the Court of Appeals that the Texas policy of prorating utility and shelter needs "violates federal regulations controlling state administration of AFDC programs. . ." *Houston Welfare Rights Organization, Inc. v. Vowell*, 555 F.2d. 1219, 1224 (5th Cir. 1977). For this reason Amicus will confine the scope of this brief to the issue of whether, by the allegations of their complaint, respondents properly invoked

federal jurisdiction under 28 U.S.C. § 1343 (3).[1] Accordingly, we turn to an examination of the relevant statutes.

The present codification of 42 U.S.C. § 1983 and 28 U.S.C. § 1343 (3) find their genesis in § 1 of the Civil Rights Act of 1871. 71 Stat. 13.[2] As originally written, § 1 provided a civil remedy for the deprivation "under color of any law" of any "rights, privileges, or immunities secured by the Constitution of the United States . . ." 71 Stat. 13. Congress wrote the jurisdictional grant into § 1 of the statute and provided concurrent jurisdiction for both the district and the circuit courts. In 1874, Congress codified the existing Statutes at Large and in so doing segregated the substantive and jurisdictional provisions of the Act. The resulting codification expanded the substantive provision to include the phrase "or of any right secured by any *law* of the United States to persons within the jurisdiction thereof", Rev. Stat. 1979; and divided the jurisdictional grants into two separate areas of the code. The scope of the jurisdiction vested in the district court by Rev. Stat. 563 (12) was "identical with that of

1. Although this issue was not technically raised in the petition for certiorari, the lower court's exercise of jurisdiction under § 1343 is at the very core of the question presented by petitioners. Cf., *Boyton v. Virginia*, 364 U.S. 454 (1960). Moreover, this issue was examined by both of the lower federal courts and has been briefed by petitioner (Brief for Petitioner, p. 8). For this reason and the reason that jurisdiction is a matter which this Court will independently examine to determine if it was properly vested in the lower federal courts, Amicus submits that this issue is properly before this Court for determination. See, e.g., *Mansfield, C.&L.M. Ry. Co. v. Swan*, 111 U.S. 379 (1884).

2. § 1343 was amended by the Civil Rights Act of 1957, 71 Stat. 634, to include what is now § 1343 (4).

the expanded substantive provision" *Lynch* v. *Household Finance Corporation*, 405 U.S. 538, 543 N. 7 (1972); while jurisdiction in the circuit court existed by virtue of Rev. Stat. 629 (16) which proscribed the deprivation of any right secured by "*any* law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." Rev. Stat. 629 (16). These two jurisdictional statutes were later merged into what is now § 1343 (3) with the "equal rights" provision being retained in the present jurisdictional grant.

Although the substantive and jurisdictional provisioning of § 1 of the Act were segregated, this court has nevertheless recognized § 1343 (3) to be the "jurisdictional counterpart" to § 1983. *Lynch*, supra, 405 U.S. at 543. It is now well established that where the right violated is of constitutional dimensions, § 1343 (3) provides jurisdiction and both statutes are to be construed identically. *Douglas* v. *City of Jeanette*, 319 U.S. 157, 161 (1943). It is apparent from its title, that the initial purpose of Congress in enacting the Civil Rights Act of 1871 was to "enforce provisions of the Fourteenth Amendment" 17 Stat. 13. On this basis, this court has recognized that an "[a]llegation of *facts* constituting a deprivation under color of state authority of a right guaranteed by the fourteenth amendment satisfies to that extent the requirement of R. S. § 1979. (1983) *Monroe v. Pape*, 356 U.S. 167. 171 (1960).[3]

3. In *United States v. Price*, 383 U.S. 787, 797 (1966) this Court, in construing 18 U.S.C. § 242, the criminal analogue to § 1983, found the phrase "rights, privileges and immunities secured by the Constitution" to include "*all of the Constitution*". Like Section 1 of the Civil Rights Act of 1871, § 242 was "originally modeled on" § 2 of the Civil Rights Act of 1866. *Lynch*, supra at 549 N. 16.

By its terms, § 1 of the Fourteenth Amendment prohibits the states from abridging the "privileges and immunities of citizens of the United States." Accordingly the question becomes whether respondents have alleged a deprivation under color of state law of any "privilege or immunity of national citizenship" within the meaning of the Fourteenth Amendment. If they have, then it clear that a constitutional violation within the meaning of § 1983 has been alleged and that jurisdiction will lie under § 1343 (3). *Hague* v. *Committee for Industrial Organization,* 307 U.S. 496, 513 (1939).

It is now well settled, that the privileges and immunities of national citizenship protected by the Fourteenth Amendment include that "limited class of interests growing out of the relationship between the citizen and the national government created by the constitution and federal laws." *Slaughter-House Cases,* 16 Wall. 36, 79 (1872). This Court has recognized that although a right finds no explicit mention in the Constitution, it may nevertheless occupy a position so fundamental to the concept of our Federal Union that it rises to the level of a constitutional guaranty within the ambit of the privileges and immunities clause of the fourteenth amendment, *United States v. Guest,* 383 U.S. 745, 758 (1966); also see, *Edwards* v. *People of State of California,* 314 U.S. 160, 178 (1941) (Douglas, J. Concurring)[4]. In the

4. The Court has, over the years, expressed its reluctance to bottom fundamental rights, which are not explicitly set forth in the Constitution, on the privileges and immunities clause of the fourteenth amendment, where an alternative means for protecting the right exists. See, e.g., *Edwards v. People of California,* supra, *Nash v. Florida Industrial Commission,* 389 U.S. 235 (1967). This judicial constraint has caused one member of this court to remark that "[T]his Court has not been timorous about giving concrete meaning to such obscure and vagrant phrases such as "due process . . . [B]ut has always hesitated to give any real meaning to the privileges and immunities clause lest it improvidently give too much" *Edwards,* supra at 183 (Jackson, J., concurring). The reason was articulated by Mr. Justice Stone in his concurring opinion in *Hague,* as follows: "[I]f its restraint upon state action were to be extended more than needful to protect relationships between the citizen and the national government . . . it would enlarge Congressional and judicial control of state action and multiply restrictions upon it whose nature, though difficult to anticipate, would be of sufficient gravity to cause serious apprehension for the rightful independence of the local government." *Hague,* supra at 520 n. 1.

case *sub judice* it is clear that the action of the state has cut into the very heart of respondents' relationship with the national government, by depriving them of full enjoyment of federal laws and regulations which were enacted for their benefit.

In its brief, petitioner contends that respondents' claim under the Supremacy Clause (Art. VI, § 2) is not constitutionally cognizable under § 1983, since the Supremacy Clause secures no rights to the individual and that the asserted right of which respondent has allegedly been deprived is one arising solely under federal statute. (Brief for Petitioner, p. 9). Amicus does not question the Supremacy Clause's function as the judicial implement for invalidating state legislation which is repugnant to the Constitution and validly enacted federal laws. The Supremacy Clause, far from being a mere "structural principle of federalism" (Brief for Petitioner, p. 9), espouses the fundamental contract between the people and their national government. This contract supplanted the tendentious confederation of separate states and gave the people the right to direct protection and full enjoyment of the laws of the national government. This Court has long recognized that the Supremacy Clause prohibits state interference with the people's right to such pro-

tection. See, e.g., *Gibbons v. Ogden,* 9 Wheat 1 (1824); *Nash v. Florida Industrial Commission,* 389 U.S. 235 (1967). In the area of federal social legislation this Court has insisted that even under the "cooperative federalism" that the AFDC system represents, *King v. Smith,* 392 U.S. 309, 316 (1968), states must adhere to the Supremacy of federal legislation conferring benefits upon American citizens. *Goldberg v. Kelly,* supra; *Dandridge v. Williams,* 397 U.S. 471, 482-83 (1970).

Thus, in cases such as the one *sub judice,* the deprivation, in a very real sense is *both* constitutional and statutory, with the ultimate deprivation being constitutional by its substance.[5]

By their complaint respondents contended, *inter alia,* that the petitioners' policy of prorating shelter and utility needs were in violation of certain federal regulations; (App.

5. We note with interest this Court's decision in *Baker v. Carr,* 369 U.S. 186 (1961). In that case petitioners contended, *inter alia,* that an apportionment statute of Tennesse was an unconstitutional deprivation of their constitutional right to equal protection of the laws. The three-judge district court dismissed this complaint for lack of jurisdiction. On appeal, this Court reversed the dismissal of their complaint, and in so doing was careful to point to the distinction between a dismissal for lack of jurisdiction and nonjusticiability. *Baker v. Carr,* supra at 198. The action was founded on § 1983, with the district court's jurisdiction being invoked pursuant to 28 U.S.C. § 1343 (3). The analysis of the Court as to whether the allegations of appellant's complaint constituted a non-justiciable contorversy exhaustively treated cases where the allegation of deprivation was brought directly under Article IV § 4 of the Constituion (republican form of government). While this Court found such cases to typically raise non-justiciable political questions, it did not, significantly we believe, find that the invocation of such a right is without the subject matter jurisdiction of the Court, but found that they present questions which although are "not wholly and immediately foreclosed" *Baker v. Carr,* supra at 198, their substance generally

p. 11)[6] and in conflict with 42 U.S.C. § 602 (a) (23). (App. p. 12). For this reason, respondents sought injunctive relief enjoining petitioner from continuing to implement this system, which they alleged was in violation of the pertinent federal laws governing the same. Of course, this is the essence of a claim founded upon the Supremacy Clause, Article VI, § 2.[7]

The substance of these allegations is, of course, that the petitioner has acted in such a fashion to deprive respondents of their right to the full use, benefit and enjoyment of the controlling federal laws; a claim which *Amicus* submits is a privilege and immunity within the scope of the fourteenth amendment, for which a cause of action is provided under 1983, and jurisdiction lies in the federal court under 28 U.S.C. § 1343 (3).[8] See e.g., *Hague v. Committee for Industrial Organization,*

leaves the Court unable to protect the "right" asserted. *Id.,* at 198. If, as the Court's decision in *Baker* would seem to indicate, that a claim under the Guaranty Clause would be sufficient to establish subject matter jurisdiction, in the sense of a deprivation of a constitutional right, within the meaning of §§ 1983 and 1343 (3), it seems incongruous to hold that the same would not be true for claims founded upon the Supremacy Clause.

6. 45 C.F.R. § 233.20 (a) (3) (ii).

7. And, such is the case "whether or not the complaint specifically invokes the Supremacy Clause." *Swift and Company v. Wickham,* 382 U.S. 111, 123 N. 18 (1965).

8. Considering the significance of the constitutional deprivation, it becomes of relatively little importance whether the *statutory* deprivation is of a "right" or a "privilege" since it is now well established that the state's enactment may not be saved "from constitutional infirmity on the ground that the [statutory deprivation] . . . [is] not of a 'right' but merely a 'privilege' ". *Sherbert v. Verner,* 374 U.S. 398, 404 (1963). Also see, *Goldberg v. Kelly,* 397 U.S. 254, 261 (1970).

supra. Accordingly, *Amicus* submits that the respondents properly invoked the jurisdiction of the district court under 28 U.S.C. § 1343 (3).

II.

CONCLUSION

For the foregoing reasons, this *Amicus* respectfully submits that the respondents properly invoked the jurisdiction of the lower federal courts under 28 U.S.C. § 1343 and that the decision of the Court of Appeals on the merits should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Brief Amicus Curiae of East Texas Legal Services, Inc., has been forwarded to all counsel of record in this cause by depositing the same in the United States mail, postage prepaid on this the 2nd day of June, 1978.

ROBERT B. O'KEEFE
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